

# Disciplinary Guidance

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## 1. Disciplinary Policy & Procedure

The purpose of these guidelines is to provide advice to managers on the use of the Council's [Disciplinary Policy and Procedures](#).

Certain legal principles underpin the disciplinary process and have a significant bearing on the fairness of disciplinary proceedings. The Council's disciplinary procedures and guidance must be followed in all formal disciplinary cases in order to comply with statutory requirements. Failure to follow the Council's procedure could result in a successful legal challenge to any disciplinary action taken, whether or not the disciplinary sanction is considered reasonable in the circumstances.

This guidance is concerned with the management of conduct. Although common principles apply, the management of [unsatisfactory performance](#) and the management of capability on the grounds of [ill-health](#) are dealt with under separate guidance notes.

If in doubt managers should contact HR Services for advice on which procedures and guidance to apply.

## 2. Equal Opportunities

The Council is an equal opportunities employer. All employees should be aware of the Council's [Equal Opportunities Policy](#) and are personally responsible for ensuring that its principles are observed. In the application of the [Disciplinary Policy & Procedure](#) it is essential that managers ensure that no employee is treated differently on the basis of their gender, race, disability, age, sexual orientation, religion or belief.

## 3. Timescales

The [Disciplinary Policy & Procedure](#) provides specific timescales within which action must be taken. These timescales reflect the need to investigate and take action on disciplinary matters as quickly as possible so that recollections of the incident are fresh, that problems can be addressed without delay and employees are left in no doubt that acts of misconduct will not be tolerated.

From the point of view of fairness to the employee accused of misconduct, the investigation should be carried out promptly and disciplinary issues should be heard and resolved as quickly and sensitively as possible. It is important to remember that the Council has a duty of care to its employees and must ensure that, even where allegations of serious misconduct are being investigated, the accused employee is treated fairly and with respect.

It is the personal responsibility of the designated officer to monitor progress and to ensure that timescales are observed, or that delays are explained.

It is also the responsibility of the designated officer to maintain contact with the employee who is the subject of disciplinary proceedings, particularly where the employee is suspended on a precautionary basis, to provide progress updates.

Please refer to the [Disciplinary Policy & Procedure](#) for details of the prescribed time limits for dealing with each aspect of the disciplinary process.

## 4. Roles

### Designated Officer

A [list of post holders](#) from each Service that have been designated with authority to take disciplinary action has been agreed.

Identifying who should act as the designated officer will depend on the circumstances of each case and the severity of the allegation against the employee.

For example allegations of potential gross misconduct will require a Director or Head of Service to act as designated officer whereas allegations of a less serious nature should be heard by a Service Manager, Head of Establishment (e.g. School Head Teacher), Head of Section or Area Service Manager.

It is the responsibility of the designated officer to ensure the following:

- That the investigating officer is given a clear remit for the investigation
- That contact is maintained with the employee who is the subject of the allegations, especially where the employee is suspended on a precautionary basis
- That progress of the investigation is monitored, having regard to procedural timescales, and delays are justified and explained to the employee who is the subject of disciplinary proceedings
- That the allegations against the employee are fully investigated and that the investigation report is adequate (the matter should be referred back to the investigating officer if the designated officer is not satisfied)
- That advice is sought from HR and that a HR Representative is available to attend the disciplinary hearing
- That the disciplinary hearing is properly convened, in writing, giving adequate notice
- That the employee who is the subject of the allegations receives a fair hearing and that any disciplinary sanction arrived at is based on a fair and full consideration of all the evidence

- That the employee is made aware of their right to appeal against any disciplinary sanction arrived at.

### **Investigation Officer**

Once appointed by the designated officer it is the responsibility of the investigating officer to :

- Arrange meetings with the employee who is the subject of the allegations and any witnesses
- Interview the employee who is the subject of the allegations and any witnesses
- Prepare the Investigation Report

Where a hearing is called it is the responsibility of the investigating officer to:

- Present a summary of the findings of the disciplinary investigation including their professional assessment of the allegations against the employee (i.e. what evidence is there of misconduct)
- Call witnesses interviewed during the investigation and question them to establish for the hearing the key elements of their evidence
- Present to the hearing any documentary or other evidence
- Answer questions from the designated officer and HR adviser, including questions about their professional assessment of the allegations (i.e. is their evidence to point towards misconduct?)
- Answer questions from the employee who is the subject of the allegations and/or the employee's representative
- Question witnesses called by the employee and/or their representative, particularly where there are inconsistencies between their evidence and evidence presented by the Investigating Officer
- When invited by the designated officer, sum-up the case, introducing no new evidence.

### **Representative**

An employee who is subject of an allegation of misconduct is entitled to be accompanied to a formal disciplinary hearing. The role of the representative is to advise and guide the employee, to present the employee's case, call witnesses and cross-examine witnesses called by the investigating officer.

While the employee can confer with their representative before answering questions put to them by the investigating officer, designated officer or HR adviser, the representative cannot answer questions on behalf of the employee.

## **HR Representative**

Throughout the disciplinary process, HR Services are available to advise, guide and support managers both in their capacity as designated officers and investigating officers. In particular, HR Services will provide the following support:

- Advice to the designated officer on the selection, appointment and briefing of an investigating officer
- Advice to the investigating officer on the conduct of the disciplinary investigation (including planning, record keeping and reporting)
- Attendance at disciplinary hearings and advising the designated officer on procedure (ensuring a fair process, in accordance with the requirements of employment law) and sanctions
- Advice on equal opportunity issues in the conduct of disciplinary proceedings
- Advice on the requirements of Council policy and possible breaches of policy
- Advice on the requirements of the disqualified from working with children list
- Advice on the implications of misconduct on membership/registration with professional or regulatory bodies
- Advice in the event of potential disciplinary action against a trade union official
- Advice on the application of precautionary suspensions or transfers

It is not the role of HR Services to reach disciplinary decisions. This is the responsibility of the designated officer, taking account of the advice of the HR Representative.

## **5. Standards of Conduct**

It is essential that employees are aware of the Council's rules and acceptable standards of conduct, and equally, what is not acceptable.

The Council expects employees to observe standards of conduct and these are contained in Council policies and procedures such as:

- [Code of Conduct for Council Employees](#)
- [Equal Opportunities Policy](#)
- [Harassment at Work Guidance](#)
- [Health, Safety & Wellbeing Policy](#)
- [Whistleblowing Policy](#)
- [Disciplinary Policy & Procedure](#)

Details of the standards set out in these documents should be communicated to employees through the induction process and reinforced by their managers through the day to day management of their activities. These documents do not constitute an exhaustive list and it should be borne in mind that misconduct can arise out of circumstances not covered by the above documents.

In addition to the general standards applicable to all Council employees there will also be specific standards of conduct and performance relevant to particular places or types of work (e.g. health and safety rules in workplaces where heavy machinery is used, cash handling rules in offices taking payments, etc). It is the role of Service managers to ensure that specific rules and standards of conduct are clearly communicated to and understood by all affected employees. Such rules and standards must be consistently applied and regularly reviewed and updated to ensure their continued relevance.

Many employees are required to hold registration with a regulatory or professional body in order to work in a particular Service with the Council. Examples would include the [Scottish Social Services Council \(SSSC\)](#) for employees engaged in work within the Social Work Service and the [General Teaching Council \(Scotland\) \(GTC\(S\)\)](#) for Teachers. In cases where serious or gross misconduct is proved or an employee resigns in circumstances where such an allegation is being investigated it is the duty of the Council to pass details to the appropriate registering body.

In notifying a registration body of such an allegation or offence the designated officer should also undertake to notify the employee who is the subject of the allegations that such a report will be made. It will be the responsibility of the Service Director or a Head of Service acting on behalf of the Director to notify the appropriate professional/regulatory body and details of the allegation/misconduct should be passed to the Director by the designated officer.

It may be necessary to notify a relevant professional/regulatory body (e.g. the SSSC or GTC(S)) at the point when an investigation begins into alleged gross misconduct. As soon as an allegation of potential gross misconduct against an individual who requires to register with a professional/regulatory body emerges details should be passed to the relevant Service Director as soon as possible.

## 6. Initial Assessment

### At a glance

- An appropriate manager should carry out an initial assessment of any observed, suspected or alleged act of misconduct before deciding on the most appropriate course of action.
- Depending on the outcome of the initial assessment, the manager may decide to take no further action, to deal with the situation through informal counselling or to begin a disciplinary investigation.

Potential disciplinary cases will arise in various ways such as an observed incident, a complaint or the finding of an audit or service review.

Where misconduct is first observed, suspected or alleged it is important that an appropriate manager considers information about the immediate circumstances and available information before reaching a decision on how to deal with the situation.

This initial assessment might include speaking to people with knowledge of the incident or examining documentary evidence. The purpose of the initial assessment is to ensure that:

- Unnecessary disciplinary proceedings are not initiated.
- A clear briefing can be provided to the investigating officer, where necessary.
- A fair process is followed from the beginning.

The initial assessment should determine:

- How serious the observed, suspected or alleged act of misconduct is (i.e. potential gross misconduct or minor breach of conduct rules)
- Were there any witnesses to the alleged or suspected misconduct and should they be interviewed
- Is there a requirement to request expert advice from, for example, Audit, Police or Fire Service
- Is it possible that the alleged act of misconduct could be dealt with through informal counselling or is an investigation required
- If an investigation is required, what allegations would require to be investigated

- Who would be the subject of the investigation
- Who reported the incident
- Is there potentially any malice involved in the allegations being made or any other reason than misconduct for an allegation to have been made

Only after an initial assessment has been carried out should a decision be reached on how to deal with the allegation. The decision should be:

- to take no further action (in such circumstances it may be necessary to notify the employee who was the subject of the allegation of the decision)
- to undertake informal counselling
- to instruct a disciplinary investigation

The initial assessment should only go so far as to establish if there are grounds for a formal investigation. As soon as it is established that an investigation is required the manager should cease to enquire into the incident and should brief an investigating officer.

A [template letter](#) confirming for the employee that no disciplinary investigation is required is available.

A [template letter](#) informing the employee that a disciplinary investigation will be carried out is available.

## 7. Conducting a Counselling Meeting

Counselling is an effective means of encouraging improvements in conduct through one to one discussion of the problem. Counselling is an effective means, short of formal disciplinary action, of addressing problems of minor misconduct.

### At a glance

- Counselling is an effective means of addressing problems of minor misconduct.
- The employee must be left in no doubt about what they did wrong, what they must do to put things right and the consequences of their failing to do so.
- Under no circumstances should a formal disciplinary warning be issued at a counselling meeting



Where a first and minor act of misconduct occurs it may be appropriate to discuss the situation with the employee through a counselling meeting. The following standards should be observed in conducting a counselling meeting:

- Arrange to meet with the employee at a place and time that will guarantee to be free from interruptions (e.g. phone, visitors)
- Open the meeting by explaining clearly the purpose of the meeting and exactly the concerns about the employee's conduct
- Invite the employee to comment on their conduct and offer any explanation for the problem
- Discuss the situation with the employee (in a constructive manner), ensuring that they understand why there is a problem that requires to be addressed
- Invite the employee to explain the alleged misconduct and why the situation occurred
- Advise the employee of the standards of conduct expected and make sure the employee clearly understands
- Ensure that the employee understands what they must do to improve their conduct and the consequences of failing to improve do so

If at any time in the course of the meeting it is considered that an informal approach is unlikely to succeed it is appropriate to inform the employee that the matter is to be formally investigated under the disciplinary procedure.

There is no automatic right of accompaniment to a counselling meeting. However, managers should make a judgement as to whether it may be helpful to agree to a request from an employee to be accompanied. Generally a counselling meeting should involve one to one discussion between the employee and their manager.

It is recommended that managers undertaking a counselling meeting with an employee take a personal note of the date, time and reason for the meeting as well as a note of any agreed actions for improvement. This note should be retained until the manager is satisfied that the employee's conduct has satisfactorily improved. Under no circumstances should such a note be retained on the employee's personal file.

A [template form](#) for recording the details of the counselling meeting is available.

## 8. Precautionary Suspension

In cases of potential gross misconduct or where the continued attendance of an employee at work could constitute a risk either to the employee, colleagues or others (e.g. service users) or to the continued delivery of a service, then it may be appropriate to suspend the employee whilst an investigation is carried out. This action should only be taken by a Director, Head of Service or other Senior Manager with sufficient authority, in consultation with HR. The precautionary suspension should be confirmed in writing by the Director or Head of Service as soon as possible thereafter.

A [template letter](#) confirming details of an employee's suspension is available.

A precautionary suspension is not a disciplinary sanction and there should be no loss of pay or other contractual benefits as a result of the decision to suspend an employee pending the completion of a disciplinary investigation.

Where an employee is suspended on a precautionary basis while an investigation is carried out it is the responsibility of the designated officer (who will normally be a Director or Head of Service in the case of suspensions) to maintain regular contact with the suspended employee. The purpose of the contact should be to keep the employee informed of progress of the investigation and to explain any delays. Normally, fortnightly contact by letter will be sufficient.

It may be appropriate to consider a temporary transfer, relocation or adjustment of duties where allegations would fall short of gross misconduct but where there is a need to temporarily move an employee away from their normal workplace.

A [template letter](#) confirming details of an employee's temporary is available.

An employee on precautionary suspension may take annual leave or be absent due to sickness during the period of suspension. Where this situation arises guidance should be sought from HR Services.

A [template letter](#) confirming details of leave and sickness arrangements during suspension is available.

## 9. Instructing a Disciplinary Investigation

### At a glance

- Where the initial assessment indicates that a disciplinary investigation will be required an investigating officer should be appointed quickly.
- The investigating officer should be chosen carefully, ensuring that the appointed person has the skills required to carry out an effective investigation.
- The investigating officer should have no direct connection with the alleged incident.
- The investigating officer should be given a clear remit for the investigation and a timescale for completion.
- The employee who is the subject of the allegation or suspicion must be informed that an investigation is to be conducted.

The designated officer is responsible for selecting and briefing the investigating officer as part of the process of initiating a formal investigation. Investigation of the incident/ allegation should take place immediately so that important details are obtained, before recollections fade. If a delay occurs then it could undermine the case for disciplinary action being taken. The investigation must be conducted carefully and fairly, and ensuring that, where practical, all witnesses are interviewed.

The investigation is very important as it is the basis upon which decisions are made and will also form the basis of the investigating officer's presentation at a disciplinary hearing, if one is required. The quality of the disciplinary investigation has a considerable bearing on the fairness of disciplinary decisions. The Investigating Officer must be aware of the significance of their role to the overall process and possess the skills required to carry out the role effectively.

When choosing the investigating officer, the designated officer should consider their:

- Ability to plan and organise
- Ability to examine an issue or problem with impartiality
- Ability to gather evidence from witnesses by using appropriate questioning styles
- Ability to assimilate a wide range of information and draw appropriate conclusions
- Ability to report findings in a concise way
- Ability to present findings in a formal setting
- Level of experience and training

The investigating officer must not have been involved in the allegation/incident.

The investigating officer's role is to gather and assemble the relevant information/facts from all available sources, with supporting evidence and to present the results in a factual way to the disciplining officer. To facilitate this, the designated officer should provide the investigating officer with an adequate brief including details of the incident or allegation, possible witnesses, timescales and any other information that may be important to the investigating officer in planning their investigation.

## 10. Conducting an Investigation

### At a glance

- Focus on the remit from the designated officer - what is required of the investigation; what information will be required and from whom
- Organise the investigation from the start – identify who to interview and arrange meetings in an appropriate order; plan what to ask each witness and what other evidence is required
- Interview witnesses identified at organising stage, identify other witnesses from names suggested by witnesses, seek written and other evidence to substantiate claims/allegations
- Probe – don't accept substantive statements from witnesses as statements of fact. Be prepared to ask probing questions beyond those planned at the organising stage. Establish what evidence witnesses can provide to support and substantiate their evidence
- Follow-up leads emerging from evidence gathered and statements taken from witnesses. Be prepared to be flexible in terms of the leads that are followed up but remain focused on the objectives of the investigation
- Complete all lines of enquiry – don't assume something is not relevant to the investigation just because, for example, it came from an unreliable source
- Report the facts gathered and separate them from unsubstantiated statements and hearsay that cannot be supported by further evidence.

The purpose of the disciplinary investigation is to look in detail at allegations of misconduct against an employee and to establish if there is any evidence to suggest that the employee may be guilty of the alleged misconduct.

The investigating officer should carry out in depth fact finding interviews with those persons who witnessed or have knowledge of the incident.

A [template letter](#) inviting the employee to an investigation meeting is available.

A [template letter](#) inviting the any witnesses to an investigation meeting is available.

Where a number of individuals are involved, each person should be interviewed separately.

The interviewees should be given the opportunity to have a friend or colleague in attendance at the interview as a witness if they wish. However, the non-availability of the interviewee's preferred friend or colleague should not be used as a reason to delay the investigation process. Where the interviewee's preferred accompanying person is not available for an extended period of time (e.g. due to annual leave) the witness should be requested to find an alternative person to accompany them to the interview. The person chosen to accompany a witness to the interview must not themselves be a potential witness to the investigation.

If the employee at the centre of the investigation wishes to be represented then this should be allowed.

### **Investigation Interviews**

The investigating officer should commence the interview by informing the individual that it is a fact finding interview to establish the facts/circumstances surrounding the alleged misconduct. The individual should be advised that any information provided could be included in the report to the designated officer, and that such information may be used in the course of a disciplinary hearing, should there be one. The employee at the centre of the allegations will receive a copy of the interview statements, should the matter proceed to a disciplinary hearing.

The investigating officer should pose a range of questions, varying their questioning style, to elicit as much information as possible from the witness. There are various questioning styles that an investigating officer can use, such as the following.

**Open questions**, where the investigating officer wants the witness to give as much information as they can, such as "what did you see?", "where were you at the time of the incident?", "what were you doing?"

**Closed questions**, where the investigating officer requires an answer to a particular point, such as "did you see the article that was stolen in the person's locker?" or "did you steal the item in question".

**Probing questions** such as, "you have said that you know the person stole the article, what evidence of this do you have?", "where did this happen", "when did it happen".

**Questions aimed at confirming understanding** such as, "am I correct in understanding that you are saying you actually saw the person take the article?"

**Questions to substantiate evidence** such as “is there anyone who might be able to confirm the version of events you have explained to me”, “are you absolutely certain that you saw what you have explained to me”.

Where there is an admission by the employee of misconduct, the investigating officer should ask the individual to explain his/her behaviour and any mitigation for their actions.

### **Witness Statements**

The interviews should be recorded both in terms of questions put and answers given. The answers obtained must be recorded, in the form of statements to be signed by witnesses in due course. Wherever possible the witnesses' statements should be in their own words (i.e. what they actually said).

A minute or record of interviews should be kept which forms the witness statement. All employees and/or witnesses should be referred to by initials throughout this statement. If the case records are to be viewed by an external, third party (e.g. Citizens Advice), information that may identify individuals should be redacted or anonymised fully.

A [template form](#) for recording witness statements is available.

The individuals should be asked to check the written statements and to sign them if they consider them to be an accurate account of what was said at the interview with the investigating officer. If there is a disagreement, then the individual should return the copy statement with a note of amendments wishing to be made. The investigating officer may accept those amendments or may decide to discuss them further with the individual(s), but once statements have been agreed and signed by the appropriate individuals, the investigating officer should also sign and date the statements. Where the witness and investigating officer cannot agree to changes requested to the witness statement then an unsigned statement should be submitted with the report along with a note of the changes that were not agreed.

Where statements made by witnesses cannot be substantiated this should be made clear in the investigation report.

### **Concluding the Investigation**

The investigation comes to an end when the investigating officer is satisfied that all the available evidence/information that it is reasonable to attempt to collect has been collected from all the witnesses identified.

Where external pressures, out with the control of the investigating officer prevent an investigation from being completed to timescale then these pressures should be examined and delays justified, ideally in the investigation report.

## Investigation Report

### At a glance

- The investigation report should present a summary of the **facts** gathered in the course of the investigation.
- The report must not make recommendations as to whether or not disciplinary action requires to be taken.
- The report must not express the personal opinions of the investigating officer.
- The report should contain as appendices all witness statements taken in the course of the investigation.

In concluding the investigation, the investigating officer will produce a report which summarises the facts, opinions and other evidence gathered throughout the course of the investigation, clearly distinguishing between facts and opinions. It is important that the Investigating Officer does not express their own personal opinion in the investigation report nor should the report make any recommendation such as that a disciplinary hearing should be convened. This is a decision for the designated officer alone. The report should be an un biased and impartial account of the facts and opinions gathered in the course of the investigation.

The investigation report should, however, conclude whether or not there is evidence suggesting that an act of misconduct has occurred. The investigating officer is appointed to carry out an assessment of the circumstances leading to an allegation of misconduct and, in the absence of clear and unequivocal evidence, may have to draw together pieces of information and provide a professional analysis of what these pieces of information, taken together, may indicate. The investigation report should enable the designated officer to determine if a disciplinary hearing will be required to consider the evidence and offer the employee the opportunity to offer explanations or mitigation for their actions.

Examples of the kind of statements that are appropriate for inclusion in an investigation report are as follows:

- *“the statements of witnesses A, B and C together with document X are consistent in that they support the allegation against the employee”*
- *“The statement of witness A is inconsistent with that of witness B in that...”.*

The investigation report **should not** contain statements such as the following:

- *“In my opinion the employee is guilty of misconduct”;*
- *“It is recommended that this matter should progress to a disciplinary hearing so that appropriate disciplinary action can be taken”.*



The investigation report should be a purely factual account of what happened, what witnesses saw and what other evidence there is.

The Report should then be passed to the designated officer with all the signed witness statements together with any other relevant paperwork.

A [template letter](#) investigation report is available.

## **Instructing a Disciplinary Hearing**

Upon receipt of the investigation report, the designated officer should consider the evidence and decide whether or not it is necessary to convene a disciplinary hearing to further consider the allegations. Where it is considered necessary to convene a disciplinary hearing the guidance in Section 16 below should be referred to. Alternatively, the designated officer may decide that no further action need be taken or that no formal action should be taken but that the employee who is the subject of the allegations should be counselled as to their future conduct. In such circumstances the process outlined in Section 8 above should be followed.

## **11. Conducting a Disciplinary Hearing**

### **At a glance**

- Must be conducted in a fair and open manner, allowing all parties to present relevant evidence and call appropriate witnesses
- Any delays to the hearing commencing should be explained to all parties and every effort should be made to ensure the hearing takes place as promptly as possible.
- A prompt decision should be made at the end of the hearing, following an adjournment
- The decision should be confirmed in writing within 5 working days of the hearing

### **Conducting the hearing**

The disciplinary hearing is an opportunity for the allegations to be put to the employee and for the employee to offer explanations and/or mitigation or to demonstrate that they are not guilty of the allegations.

As such the disciplinary hearing is a very important stage in the disciplinary process and one which should be conducted properly. There will be very little defence to a complaint that disciplinary action was unfair if the employee has not



been given an opportunity to defend themselves.

The designated officer must ensure that a HR Representative is available to attend the disciplinary hearing.

A [template letter](#) for inviting an employee to a disciplinary hearing is available.

A [template letter](#) for inviting any witnesses to a disciplinary hearing is available.

It is also important that the investigating officer prepares thoroughly prior to the hearing. Such preparation would include ensuring witnesses are available to attend the disciplinary hearing, briefing witnesses as to what to expect in the hearing (i.e. to be asked questions by the Investigating Officer, Designated Officer, HR Representative, employee and/or representative). However, the investigating officer must not advise witnesses of how they should respond to questions.

The designated officer is responsible for chairing the disciplinary hearing, ensuring that all parties are given the opportunity to state their case and reaching a decision.

The designated officer should manage proceedings as follows:

- Open the hearing by clearly stating its purpose, explaining the roles of people in attendance
- Ensure that the employee is aware of their right to be represented. Where they are not represented ask them to confirm that they wish to proceed without a representative. Where they are represented, ask the representative to confirm their name, relationship to the employee and that they understand the role of the representative
- Briefly describe the running order for the hearing and ensure that all are prepared to continue
- Invite the investigating officer to make their opening statement of case (presenting only information that was reported in the investigation report) and call witnesses
- Invite the employee and/or representative to ask questions of witnesses called by the investigating officer
- Designated Officer and HR Representative ask questions of witnesses called by the investigating officer
- Invite employee and/or representative to make their opening statement of case
- Invite the employee and/or representative to call witnesses and ask questions (note, prior to hearing, employee should have been asked to provide the designated officer with details of witnesses they intend to call at

least 1 day before the hearing)

- Invite the investigating officer to ask questions of witnesses called by the employee and/or representative
- Designated Officer and HR Representative ask questions of witnesses called by employee and/or representative
- Invite the investigating officer to sum-up their case, introducing no new evidence at this stage
- Invite the employee and/or representative to sum-up their case, introducing no new evidence at this stage
- Ensure all parties have nothing further to add
- Adjourn the hearing to consider the evidence and reach a decision
- Reconvene, announce decision and advise that this will be confirmed in writing within 5 working days
- Close the hearing
- Confirm decision in writing within 5 working days

In the case of questions to the employee who is the subject of the allegations from the Designated Officer, Investigating Officer or HR Representative the employee may confer with their representative but the representative cannot answer questions on the employee's behalf.

# [Conducting A Disciplinary Hearing]

Designated Officer

Invite Employee (and representative) and Investigating Officer into Hearing (at the same time)

1. Open Hearing	2. Hear Investigating Officer's case:	3. Hear Employee's Case:	4. Close the Hearing:
Explain Your Role	Invite Investigating Officer (IO) to make opening statement	Invite employee/rep to make opening statement	Invite IO to sum-up
Explain hearing process	Invite IO to call witnesses	Invite employee/rep To call witnesses	Invite employee/rep To sum-up
Confirm right to representation	Question witnesses	Question witnesses	Adjourn and ask employee and IO to leave the room
Explain role of Personnel Adviser Employee's Representative	Invite employee/rep to question witnesses and IO	Invite IO to question witnesses	Consider evidence



Reach Decision and Confirm in Writing

## Reaching and communicating a decision

The Disciplinary Procedure contains the following disciplinary sanctions:

- Verbal Warning
- Written Warning
- Final Written Warning
- Punitive Disciplinary Action
- Dismissal

An employee's misconduct does not require to be proved beyond reasonable doubt (as in a criminal prosecution case). It is sufficient for the designated officer to be satisfied "in the balance of probabilities" that an employee is guilty of an act of misconduct, provided the above principles are observed. However, to be satisfied that this test has been met the manager must be sure that the investigation has been sufficiently thorough and the employee who is the subject of the allegations has had as much opportunity as is reasonable to defend themselves.

Deciding on an appropriate disciplinary sanction will depend on the severity of the allegations against the employee, any mitigating factors, the employee's previous service and disciplinary record. The HR Representative in attendance at the disciplinary hearing will provide advice on appropriate sanctions.

Before announcing the disciplinary sanction, reference should be made to the list of designated officers to ensure that the officer hearing the case has authority to apply the disciplinary sanction considered appropriate.

Where the designated officer is not authorised to apply the disciplinary sanction considered appropriate the employee should be advised that the allegation has been proved but that the designated officer hearing the case does not have sufficient authority to apply the disciplinary sanction considered most appropriate in the circumstances of the case and that a recommendation will be made to a more senior manager who will then arrange to meet the employee.

Where a decision is reached to take disciplinary action, careful consideration must be given to the appropriate level of sanction, reflecting the severity of the act of misconduct and the employee's current disciplinary record. This is particularly so in the case of acts of gross misconduct where dismissal is contemplated. In such cases, consideration should be given to whether or not there are any reasonable alternatives to dismissal before the decision to dismiss is confirmed. The HR Representative can advise on the most appropriate disciplinary sanction, taking account of similar cases in the Council, to ensure that a consistent, and therefore, fair sanction is applied in each case.

For a dismissal for gross misconduct to be considered fair it must, as a minimum, satisfy the following principles:

- There must be a **genuine belief** in the employee's guilt
- This genuine belief must be **reasonably held** (e.g. sufficiently evidenced)
- As much **investigation** as is reasonable in the circumstances must have been carried out

Designated Officers should Consider the following questions before making a decision to dismiss an employee due to misconduct:

1. Has there been as much investigation as is reasonable in the circumstances?
2. Have the requirements of that Disciplinary Policy & Procedure been properly complied with up to this point, including advance notice to the employee of the matter(s) to be considered at the disciplinary hearing?
3. Has the designated officer paid sufficient regard to any explanation put forward by or on behalf of the employee?
4. Does the designated officer genuinely believe that the employee has committed the misconduct as alleged?
5. Does the designated officer have reasonable grounds on which to sustain that belief on the balance of probabilities (i.e. is it more likely than less likely that the employee did what is alleged)?
6. Is the misconduct sufficiently serious to justify dismissal?
7. Has the designated officer given due regard to any mitigating circumstances put forward by, or on behalf of, the employee (and any response to these by management's representative, if any)?
8. Is the decision within the band of reasonable responses of a reasonable employer in the circumstances?
9. Is the decision consistent with decisions made in similar cases across the Highland Council?

Template letters for confirming disciplinary sanctions are available as follows:

[No sanction required](#)  
[Provision of an oral warning](#)  
[Provision of a written warning](#)  
[Provision of a final written warning](#)  
[Dismissal from employment](#)

## **Non-attendance and Requests for Postponement**

If the employee who is the subject of allegations of misconduct is given sufficient notification of the time and date of the disciplinary hearing but refuses to attend they should be notified that the hearing will be reconvened and will proceed in their absence if they fail again to attend.

If the employee again fails to attend then it may be reasonable for the disciplinary hearing to proceed in their absence. HR advice must be sought before reaching this decision.

However, it may be the case that the employee is seeking a postponement of the hearing for a legitimate reason and any grounds put forward in support of a request for postponement must be carefully considered. Where the grounds for a request for postponement are reasonable (e.g. sickness) the designated officer should consider agreeing to postpone the hearing to an alternative date, provided the request for postponement does not result in an unreasonable delay in proceeding.

Where it appears that the employee is attempting simply to delay proceedings the designated officer should give consideration to proceeding with the hearing as planned. It would be reasonable for the designated officer to seek to refer the employee to the Council's Occupational Health service for an opinion as to when they would be fit to attend a hearing before a decision is taken to proceed with the hearing in their absence.

## **Non-Attendance of Witnesses**

The employee who is the subject of allegations of misconduct must have the opportunity to defend themselves and this would normally include putting questions to witnesses who have given statements against them. However, in exceptional circumstances it may not be possible for a witness (e.g. a member of the public) to attend a disciplinary hearing or a witness may not be willing to attend (e.g. in cases where the allegation involves threats of or actual physical violence).

In such circumstances consideration should be given to whether or not it is reasonable to proceed with the disciplinary hearing. Where the designated officer considers, having taken HR advice, that it is necessary to proceed with a disciplinary hearing without a witness(es) in attendance the employee who is the subject of the allegations must have access to the statement given by the witness and must be afforded the opportunity to question the Investigating Officer about the statement.

It may also be appropriate for the designated officer to adjourn the hearing and meet separately with the witness(es) to put questions to them from the employee or their representative. In such circumstances, the decision arrived at by the designated officer at the conclusion of the hearing must take account of the fact that the employee who is the subject of the allegations has not had the opportunity to put questions to the witness(es).

## 12. Appeals

The right of appeal and how to submit an appeal must be clearly set out in writing to the employee following the conclusion of the disciplinary hearing. This should specify to whom the appeal should be submitted and the timescale for submission of an appeal.

Where an appeal against a disciplinary sanction is to be heard by a Director or Head of Service they should make arrangements to hear the appeal under the Disciplinary Policy and Procedure.

A [template letter](#) for inviting an employee to an appeal hearing is available.

A [template letter](#) for inviting any witnesses to an appeal hearing is available.

Where an appeal against a disciplinary sanction is to be heard by a Director or Head of Service, the following principles should be observed:

- Act in good faith and do not be unduly influenced by what has gone before
- Clarify at the outset, if it is not already evident, the grounds on which the appeal has been submitted
- Do not feel committed to upholding the designated officer's decision, approach the case with an open mind
- Hear both sides of the case and weigh up the arguments
- Be prepared to review the whole case
- Consider whether, in the circumstances of the case, the disciplinary sanction arrived at was within the band of reasonable responses of a reasonable employer
- Ensure that the decision reached is one that is within the powers of the officer designated to hear the appeal (i.e. do not apply a more harsh sanction).

The [procedure for appeals to the Appeals Sub-Committee](#) should be referred to as a guide to the process to be followed at appeals to Director/Head of Service.

Template letters for confirming the findings of appeals hearings are available as follows:

[The appeal is upheld](#)

[The appeal is upheld in part](#)

[The appeal is not upheld](#)

## **13. Further Guidance**

### **Substance Misuse**

Where disciplinary issues arise involving a possible alcohol, drug or substance misuse problem the disciplining officer must have due regard to the terms of the Council's Substance Misuse Policy.

A copy of the policy is already held in each Service and is also available on the Council's internet. Guidance should be sought from HR Services.

The Council generally adopts a supportive stance where employee conduct or performance is affected by alcohol or substance misuse and the option exists to refer such employees to the Substance Misuse Policy.

However, an exception to this would occur where the allegations against the employee involve acts of gross misconduct (e.g. drink driving a council vehicle, serious risk to health and safety of others fighting at work) involving the misuse of alcohol or drugs. In particular, the misuse of illegal substances at work cannot be condoned (indeed to condone illegal drug use in premises controlled by the Council can constitute an illegal act in itself) and would be considered an act of gross misconduct.

### **Child Protection**

Where an employee is suspected or alleged to have committed an act of misconduct or negligence in the course of their work involving or resulting in the harming of children the matter must be dealt with in accordance with specific procedures prepared by the Care & Learning Service. In the event of such cases arising, a senior manager (e.g. Head of Service) should be contacted at the earliest opportunity.

In cases where an employee is dismissed or removed from working with children due to an incident of misconduct which has harmed a child or put a child at risk there is a legal requirement to refer this employee's name to the Scottish Executive for inclusion on the Disqualified from Working with Children List. In all such cases HR advice should be sought in the first instance. It is the responsibility of the Depute Chief Executive/Director of Corporate Resources to co-ordinate the provision of information to the Scottish Government for this purpose.

### **Action Against a Trade Union Official**

Where it is intended to take disciplinary action against an official of a recognised Trade Union, it will be the responsibility of the designated officer, after taking advice from HR, to ensure that the full time officer of that Union has been



informed. Disciplinary action will normally be taken until the circumstances have been discussed with the full time Trade Union officer.

## **Strategy for the Prevention and Detection of Fraud and Corruption**

The Council has an approved Strategy for the Prevention and Detection of Fraud and Corruption. Whenever any matter arises that involves, or is thought to involve irregularities concerning finance, assets, or property in the exercise of the functions of the Council, the Head of Service concerned should immediately notify the Head of Internal Audit.

Where investigations indicate that a criminal offence may have been committed it is for the Head of Internal Audit to report the matter to the Police, where appropriate, following consultation with the Chief Executive and the Depute Chief Executive/Director of Corporate Resources. Information on how to respond to such incidents of potential misconduct can be found in the above Strategy.

## **Criminal Offences**

Where an allegation of a criminal offence other than of the type described in 14 above arises from employment or has a direct bearing on employment, the investigating officer should ascertain the circumstances from the employee. The circumstances should, as before, be investigated as fully as possible, and may involve the investigating officer making interim reports.

Where the Police are called in, they will not be involved in the disciplinary process. Where an employee is charged and/or convicted of a criminal offence outside of work it should not automatically be assumed that a disciplinary offence has been committed. Consideration must be given to the relevance of the alleged offence to the duties of the individual as an employee.

The alleged offence may raise doubts about the suitability of the individual for the duties of the post held.

The Council has an interest, as an employer, in allegations of criminal offences against its employees. This may particularly be the case where publicity surrounding the offence or alleged offence has the potential to bring the Council into disrepute or damage public confidence in standards of service delivery. In such cases, reliance should not be placed on evidence being forthcoming from the Police or Procurator Fiscals' office. Any decision to proceed to a disciplinary hearing should only be based on the facts established by a thorough internal disciplinary investigation.

## **Police Investigations**

Disciplinary investigations and criminal investigations are separate and distinct. The Council's interest and Police interest are different. Pending Police investigation or Court proceedings are not reasons for delay in an internal

investigation and disciplinary action.

If an employee is subsequently found not guilty or the case is not proven in criminal proceedings or the case is dropped, this does not prevent an allegation of misconduct being substantiated at a disciplinary hearing and a sanction being applied. There is no requirement to await the outcome of a criminal charge nor should evidence from a criminal investigation be relied upon as the sole source of evidence in disciplinary proceedings.